

#### **405 KAR 3:005. Applicability of chapter.**

RELATES TO: KRS 350.060, 350.070, 350.085, 350.090, 350.093, 350.130, 350.135, 350.151, 350.200, 350.210, 350.220, 350.405-350.440, 350.450, 350.455, 350.465

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.050, 350.060, 350.151, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations pertaining to surface coal mining and reclamation operations. This administrative regulation establishes a deadline for application for interim permits, sets forth the circumstances under which interim permits may be issued, denied, revised, or amended after the date of primacy, and provides for their extension and expiration. This administrative regulation designates 405 KAR Chapters 1 and 3 as applicable to those surface coal mining and reclamation operations not covered by 405 KAR Chapters 7 through 24 after the date of primacy. Furthermore, this administrative regulation preserves 405 KAR Chapters 1 and 3 for reinstatement in the event that the cabinet is enjoined from implementing all or part of 405 KAR Chapters 7 through 24.

Section 1. General. The administrative regulations of this chapter constitute the interim regulatory program for surface effects of underground coal mining which is superseded by the permanent regulatory program for surface coal mining and reclamation operations contained in 405 KAR Chapters 7 through 24. However, as set forth in the permanent program, the transition from the interim program to the permanent program does not occur immediately for all operations upon the date the permanent program becomes effective. Furthermore, the interim administrative regulations will apply to the reclamation of areas affected under the interim program. In addition, the interim administrative regulations may again become fully effective if the Commonwealth is enjoined by a court of competent jurisdiction from enforcing the permanent program. Therefore, this chapter shall be applicable on and after the date of primacy only as set forth below.

Section 2. Issuance of Interim Program Permits After the Date of Primacy. (1) During the first sixty (60) days after the date of primacy, the cabinet may issue, deny, revise or amend an interim program permit under the requirements of this chapter for areas covered by an interim program application submitted prior to the date of primacy.

(2) Except as provided in subsection (3) of this section and Section 6 of this administrative regulation:

(a) No application received by the cabinet after the date of primacy will be processed under this chapter; and

(b) No interim program permit shall be issued under this chapter after sixty (60) days from the date of primacy.

(3) The cabinet may revise a valid interim program permit at any time after the date of primacy under this chapter in order to approve changes to methods of operation and to approve incidental boundary revisions where such revision is necessary for the continuation of the operation and the revision does not include additional areas from which coal will be removed.

Section 3. Performance Standards. The performance standards of this chapter shall apply to all operations conducted under a valid interim program permit until eight (8) months after the date of primacy. Where an existing operation is allowed to continue operating after the eight (8) month period under 405 KAR 8:010, Section 3(3), the performance standards of this chapter shall continue to apply until the interim program permit expires as set forth in Section 7 of this administrative regulation.

Section 4. Bond Release. The bond release criteria and procedures of this chapter shall apply to all areas affected and reclaimed under a valid interim program permit.

Section 5. Bond Forfeiture. The bond forfeiture criteria and procedures of this chapter shall apply to all areas affected and reclaimed under a valid interim program permit.

Section 6. Hearings. The hearing provisions of this chapter shall apply to the resolution of all notices and orders that were issued by the cabinet prior to the date of primacy as defined in 405 KAR 7:020.

Section 7. Reinstatement of Interim Program. In the event the cabinet is enjoined by a court of competent jurisdiction from enforcing all or part of the permanent regulatory program, all or part of the provisions of this chapter shall become effective for all operations consistent with the ruling of the court.

Section 8. Extension and Expiration of Interim Program Permits. Notwithstanding the expiration date contained in the valid interim program permit, all valid interim program permits shall expire eight (8) months after the date of primacy unless the conditions of 405 KAR 8:010, Section 3(3) are met, in which case the interim program permit shall expire on the date the cabinet:

- (1) Denies the permanent program permit; or
- (2) Issues the permanent program permit, or on the 30th day after the date of the decision to issue, whichever is sooner. (8 Ky.R. 1461; eff. 1-6-83.)